

# **Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Georgia on mutual encouragement and protection of investments**

The Government of the Kyrgyz Republic and the Government of Georgia, hereinafter referred to as the "Parties",

Wishing to strengthen economic cooperation on a long-term basis for mutual benefit of both Parties,

Having the intention to create and maintain favorable conditions for investors of one Party in the territory of the other Party,

Recognizing that the promotion and mutual protection of investments under this Agreement will stimulate a business initiative in this area,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" will cover any monetary or material contribution invested in connection with economic activity by an investor of one Party in the territory of the other Party in accordance with the current legislation of the latter and will include, in particular, but not exclusively:

(a)

Movable and immovable property,

(b) Shares, securities and debentures of legal entities or the property share of these legal entities,

(c) Loans, loans, targeted bank and financial contributions and other cash requirements related to the implementation of investments,

(d) Intellectual property rights, including copyrights, trademarks, patents, industrial designs, technological processes, know-how, trade secrets, brand names and goodwill associated with an investment.

Any change in the form in which assets are invested will not affect their character as an investment.

2. The term "investor" means - the Party, its natural or legal persons that carry out investments in the territory of the other Party:

(a) The term "natural person" means any natural person who has citizenship or permanent residence in either Party in accordance with its laws,

(b) The term "legal entity" means, in relation to any Party, any organization, institution, enterprise established in accordance with the current legislation of each Party and which has the right to invest in the territory of the other Party.

3. The term "income" means money received as a result of an investment and includes, in particular, but not exclusively, income, interest, capital gains, shares, dividends, royalties, and service fees.

4. The term "territory" means, in relation to each Party, the territory under its sovereignty, as well as the sea and underwater areas over which this Party exercises, in accordance with the Constitution of its State and rules of international law, sovereignty, rights and jurisdiction.

## **Article 2. Application of this Agreement**

The terms of this Agreement will apply to all investments made by investors of one Party in the territory of the other Party both before and after the entry into force of this Agreement.

The provisions of this Agreement shall not apply to investments made before December 16, 1991.

### **Article 3. Promotion and Protection of Investments**

1. Each Party shall encourage and create favorable conditions for investors of the other Party to make investments in its territory and allow such investments in accordance with its legislation.
2. Investments of investors of either Party shall enjoy fair and equal treatment, full protection and security in the territory of the other Party.

### **Article 4. National Treatment and Most-favored-nation Treatment**

1. Each Party on its territory shall provide investors of the other Party with a regime that is fair and equal and no less favorable than that which it provides to investments of its own investors or investments of investors of any third state.
2. Each Party on its territory shall provide investors of the other Party with respect to the management, support, use, receipt of income, exemption from payment of value added tax, a special tax on maintaining the most important sectors of the national economy and disposing of their investments a regime that is fair and equal and no less favorable than that which it provides to its own investors or investors of any third state.
3. The provisions of paragraphs 1 and 2 of this article shall not be interpreted as obliging one of the Parties to extend to investors of the other Party the benefits of any regime, preferences or privileges that may be extended by the last Party arising from:
  - a) Any customs union or free trade zone or similar international agreements that affect the investment regime of cooperation or other forms of regional cooperation to which any Contracting Party is a party or may become a party;
  - b) Any international agreement or arrangement that deals with all or part of the taxation.

### **Article 5. Compensation for Losses**

1. When the investment of investors of any Party bears losses due to war, armed conflict, national emergency, coup, insurrection, conspiracy, natural disaster, accidents, or other similar circumstances in the territory of the Party, it will grant them a regime in relation to restitution, compensation, or other decision no less favorable than that accorded to it by investors of any third state.
2. Without prejudice to the conditions of paragraph 1 of this article, investors of one Party who, during any events referred to in this paragraph, incur losses in the territory of the other Party arising from:
  - a) The requisition and destruction of their property by its forces or authorities;
  - b) The destruction of their property by its forces or authorities, not caused by military action or by the need for the situation;Fair and adequate compensation will be provided.

### **Article 6. Expropriation**

1. Investments of investors of any Party shall not be nationalized, expropriated, or subject to measures having the effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Party if they are not related to measures taken in the public interest carried out in legislation or in response to actions taken by the other Party. If it takes place, expropriation will be conducted in accordance with the legislation of the Party, on non-discriminatory basis and will be accompanied by conditions for the payment of immediate adequate and effective compensation. Such compensation will be equal to the market price of the investment at the time when the expropriation or threat of expropriation has become well known, will include the percentage of the value of the withdrawn investments at the LIBOR rate from the time of expropriation to the full payment of compensation, will be paid in the currency in which the investment was made or by agreement of the parties in any other currency acceptable to the investor, will be implemented without delay, will be one that is effectively implemented and freely transferred.
2. The victim will be granted the right to appeal against the decision on expropriation or payment of compensation in

accordance with the rules of the proceedings of the Party to whom the expropriation was effected.

3. The provisions of paragraph 1 of this Article shall also apply when the Party expropriates the assets of a company that is registered as a joint-stock company or is based in any other organizational and legal form according to the legislation in force on its territory and in which investors of the other Party have shares.

## **Article 7. Transfers of Funds**

1. The Parties guarantee the transfer of payments that relate to investments and income, in accordance with the current legislation of the Parties. Transfers will be made without any restrictions and delays. Such translations will include, in particular, but not exclusively:

- a) Capital and additional money to support or increase investment;
- b) Income, interest, dividends and other current income,
- c) Payments made in accordance with loan agreements related to investments,
- d) Royalties or fees for services,
- e) Proceeds from the sale or liquidation of investments,
- f) Earnings of natural persons in accordance with the legislation of the Parties received by them in connection with the implementation of an investment in the territory of that Contracting Party.

2. For the purposes of this Agreement, exchange rates will be official rates that are valid for current agreements at the date of transfer, unless otherwise agreed.

## **Article 8. Subrogation**

1. If the Party or its intermediary makes payments to its own investors in accordance with the guarantee it has provided in connection with an investment in the territory of the other Party, the latter Party recognizes:

- a) The transfer, or by law or in accordance with a lawful agreement in that country, of any right or right of claim of the investor to the first Party or its designated intermediary,
- b) That the first Party or its designated intermediary has the right, as a result of subrogation, to exercise the rights and make demands of this investor and assume the obligations associated with this investment.

2. The rights or claims received as a result of subrogation will not go beyond the rights and requirements of the investor.

## **Article 9. Disputes between the Party and the Investor of the other Party**

1. Any dispute that may arise between an investor of one Party and another Party in connection with an investment in the territory of that Party shall be the subject of negotiations between the Parties.

2. If any dispute between an investor of one Party and the other Party can not be so resolved within six months from the date of filing a written claim, the investor will receive the right to transfer the case:

- a) For consideration by the judicial authority of the Party in whose territory the an investment is made, or
- b) The International Center for the Settlement of Investment Disputes (ICSID), bearing in mind the relevant provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which is open for signature in Washington, DC, on March 18, 1965, if the Contracting Parties have become parties to this Convention, or
- c) The arbitrator or the international arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) Arbitral awards will be final and binding on both Parties to the dispute.

## **Article 10. Resolution of Disputes between the Parties**

1. Disputes between the Parties concerning the interpretation or application of this Agreement should, if possible, be resolved through mutual consultations and negotiations.

2. If such a dispute can not be so resolved within six months of its commencement, at the request of any Party, it shall be

referred to the Arbitration Court in accordance with the provisions of this article.

3. The Arbitral Tribunal shall be established for each individual case as follows, within two months of receipt of a written request for arbitration, each Party shall appoint one member of this Court. These two members will elect a third-country national who, after approval by the Parties, will be appointed President of the Court (hereinafter "Chairman"). The Chairman will be appointed within three months from the date of appointment of the other two members.

4. If, during any of the periods specified in paragraph 3 of this article, the necessary appointments have not been made, any Party may, in the absence of another arrangement, invite the President of the International Court of Justice to make the necessary appointments. If it turns out that he is a citizen of any Party or if other reasons prevent him from performing this function, the Vice-Chairman will be invited to make the necessary appointments. If it turns out that the Vice-Chairman is also a citizen of a Party or can not perform the specified function, a member of the International Court of Justice of the United Nations who is the seniority who does not have the citizenship of any of the Parties and is free to perform the specified function will be invited to do the necessary destination.

5. The Arbitral Tribunal shall take its decisions by a majority vote. Such decisions will be binding on each Party. Each Party will bear the costs of its members of the court and its representation in arbitration proceedings, the costs for the chairman and other expenses will be borne in equal parts by both Parties. The Arbitration Court will determine its own procedure and may decide by its decision which of the Parties will bear most of the costs.

## **Article 11. Application of other Rules and Special Obligations**

1. If the issue is governed simultaneously by this Agreement and by the other international agreement to which both Parties are parties, nothing in this Agreement will prevent the Parties or any of their investors who invest in the territory of the other Party from taking advantage of those rules that are more favorable for relation to their case.

2. If the regime that is to be provided to one Party by investors of the other Party in accordance with its laws and regulations or with other special provisions of contracts is more favorable than that granted by this Agreement, it will be granted more favorable.

## **Article 12. Introduction of Amendments and Additions**

Changes and additions may be made to this Agreement by written agreement between the Parties. Any amendment shall enter into force if either Party notifies the other Party that it has regulated all relevant formalities. The amendments prevent the implementation of such an amendment.

## **Article 13. Entry Into Force, Duration and Termination of the Agreement**

1. Each Party shall notify the other Party in writing of the completion of the procedures required by its legislation for the entry into force of this Agreement. The agreement will come into force from the date of the last written notification.

2. This Agreement shall remain in force for a period of ten years. Its validity will be automatically extended for the next 5 years if neither Party notifies the other Party at least six months before the expiration of the relevant period of its intention to terminate this Agreement.

3. With regard to investments made prior to the termination of this Agreement, the terms of this Agreement (Articles 1-11) will remain in effect for ten years from the date of its termination.

Done in Tbilisi, on April 22, 1997, in two official copies, each in Kyrgyz, Georgian and Russian, all texts being equally authentic. For the purposes of the interpretation of the provisions of this Agreement, the text in Russian shall prevail.

For the Government of Georgia

For the Government of the Kyrgyz Republic